FILED
NOV 13 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 573

HYMAN G. STEIN, Petitioner,

vs.

ST. LOUIS PUBLIC SERVICE COMPANY, Debtor, HENRY W. KIEL, Trustee for ST. LOUIS PUBLIC SERVICE COMPANY, et al.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit,

and

BRIEF IN SUPPORT THEREOF.

HYMAN G. STEIN,
722 Chestnut Street,
St. Louis, Missouri,
Petitioner, Pro Se.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CE ntral 4477.

INDEX.

Page

Petition for writ of certiorari 1-19

Questions presented 2

Summary statement of matter involved 4

Reasons relied on for allowance of writ 14

Prayer for writ 19

Supporting brief 21-33

Opinions of the courts below 21

Jurisdiction of this Court 21

Date of final judgment below 22

Statement 22

Specifications of error 22

Argument 25

Point I (Assignment of Errors A, B, C, D, E, F and G) 25

Point II (Assignment of Error H) 29

Point III (Assignment of Error I) 32

Conclusion 33

Cases Cited.

Curtis et al. v. Metropolitan Street Railway Company, 125 Mo. App. 369, 372, 374, 102 S. W. 62, 63 (Kansas City Court of Appeals) 17, 33

Danciger et al. etc. v. Cooley, 248 U. S. 319, 327 ..... 15, 26

Dickinson Industrial Site, Inc., v. Cowan, 309 U. S. 382 22

Downtown Inv. Ass'n v. Boston Metropolitan Bldg., Inc., 81 F. (2) 314, 329 (C. C. A. 1 C.) 17, 29

Duvall v. Craig et al., 2 Wheat. 45, 58-59 ..... 14, 27

Edwards v. Bay State Gas Co., 172 F. 971 31

Erie Railroad Company v. Tompkins, 302 U. S. 671 ... 22

Exley et al. v. H. W. Clark Co., 79 F. (2) 681, 684 (C. C. A. 7 C.) 17, 29

Gavinzel v. Crump, 89 U. S. 308, 319 15

Harrison v. Fortlage, 161 U. S. 57, 63 ..... 15, 16, 28, 30

Ivanhoe Building & Loan Association of Newark v. Orr, 295 U. S. 243 22

Kihlberg v. United States, 97 U. S. 398, 402 ..... 14, 15

Kokusai Kisen Kabushiki Kaisha v. Columbia Stevedoring Co., Inc., 100 F. (2) 1016, affirming decision of District Court, 23 Fed. Supp. 403, 405 ..... 15, 26

Kraemmerer v. St. Louis E. T. Ry. Co., 201 Mo. App. 305, 315, 211 S. W. 687, 689 (St. Louis Court of Appeals) 17, 33

Mylton et al. v. New York, C. & St. L. R. Co., 198 S. W. 189 (Kansas City Court of Appeals; not officially reported) 17, 33

New York Rapid Transit Co. v. New York, 303 U. S. 573, 592 ..... 14, 27

Railroad Companies v. Schutte, 103 U. S. 118, 140 ..... 14, 27

Robbins v. Rollins' Executors, 127 U. S. 622, 633 15

Sheets v. Selden, 74 U. S. 416, 424 ..... 15, 28

The Anasoldo San Georgio I. v. Rheinstrom Brothers, 294 U. S. 494 22

The Harriman, 76 U. S. 161, 173 15

Turner v. Woodward, 259 F. 737, 750 (approving and following decision in Edwards v. Bay State Gas Co., 172 F. 971, 978, 981) 16, 31

Wallace v. Fiske, 80 F. (2) 897, 907-909 25

Warner v. New Orleans, 167 U. S. 467 22

Weiffenbach v. McLean et al., 79 F. (2) 63, 68 (C. C. A. 9 C.) 17, 29

Statutes Cited.

Bankruptcy Act, Sec. 24 (c), as amended by the Act of June 22, 1938, 52 Stat. 854-855, 11 U. S. C. A. 47 (c) 21

Bankruptcy Act, Sec. 77-B, 11 U. S. C. A., Sec. 207 (f, 5) 18

Chandler Act, 11 U. S. C. A., Sec. 621 (4), Sec. 636, Subchapter XIII 18, 31, 32

Judicial Code, Sec. 240 (a), as amended by Act of Feb. 13, 1925, 43 Stat. 938 (28 U. S. C. A., Sec. 347)..... 21

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PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Hyman G. Stein, petitioner, and respectfully petitions this Honorable Court to grant a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit, and to remove therefrom to this Court, for review, the record in the case lately pending in said Circuit Court of Appeals styled "In the Matter of St. Louis Public Service Company, Debtor. Hyman G. Stein, Appellant, vs. St. Louis Public Service Company, Debtor; Henry W. Kiel, Trustee for St. Louis Public Service Company, et al., Appellees," being Cause No. 11,669 in bankruptcy, on the docket of said Circuit Court of Appeals.

The duly certified record, including all of the proceedings here material, had in the District Court of the United States for the Eastern District of Missouri, where said cause was heard, and in the said Circuit Court of Appeals, to which an appeal was taken by petitioner from the judgment of the trial court, is filed herewith under separate cover.

Your petitioner represents that he is aggrieved by the decision and judgment of said Circuit Court of Appeals in said cause wherein said Circuit Court of Appeals on July 24, 1940, affirmed the judgment of the trial court, and on August 17, 1940, thereafter denied this petitioner's petition for a rehearing of said cause.

Your petitioner states that the matters of issue in said cause are of peculiar gravity and great general importance, in that the following are the questions presented:

QUESTIONS PRESENTED.

1. Where, in a bankruptcy proceeding for the reorganization of a street railroad corporation, the Reorganization Plan provides, and the tort creditors receive from the District Court a notice that, under the terms of the Plan, holders of tort claims will receive in cash 35 per cent of the amount of their claims, together with their court costs, and that,

> "in addition thereto, and as a further payment on account of such claims the Reorganized Company shall pay in cash the reasonable compensation and expenses of The (tort creditors') Committee * * *, and its counsel, for their services in, and in connection with, the reorganization proceedings, the amount of such compensation and expenses to be determined by the Court, * * *"

and such proceedings are had that the Plan, with such provision therein, is duly accepted by the tort creditors

and confirmed by the Court — May the Court thereafter make such an order as in effect disallows the payment to the tort creditors of 35 per cent of the amount of their claims, net to themselves, and leaves the tort creditors personally liable for the services performed by such counsel on their behalf in, and in connection with, the reorganization proceedings?

2. Where such provision was incorporated in the Plan, in pursuance of the reorganization committee's agreement with the tort creditors' committee that the tort creditors should receive 35 per cent of their claims in cash, net to themselves, and the District Court, using the aforesaid language contained in the Plan, notifies each tort creditor in writing of said provision and further states in such written notice that the Court has found the Plan to be fair, equitable and feasible, and that

> "Under the Plan you are entitled to receive thirty-five per cent of your claim in cash,"

and such proceedings are had that the Plan is duly accepted by the tort creditors and confirmed by the Court — May the Court thereafter refuse to allow compensation to the tort creditors' counsel for his services on their behalf in, and in connection with, the reorganization proceedings and restrict his compensation by relating it solely to the benefit of his services to the debtor's estate?

3. Where a Reorganization Plan, as accepted by the parties and confirmed by the Court, provides that holders of tort claims shall receive a specified cash payment, and that, in addition thereto,

> "and as a further payment on account of such claims"

the Reorganized Company shall pay in cash the reasonable compensation and expenses of the tort creditors' commit-

tee and its counsel for their services in, and in connection with, the reorganization proceedings—May the Court consider and treat the compensation of said counsel for such services as a reorganization expense, thereby restricting his compensation by relating it solely to the benefit of his services to the estate and leaving the tort creditors liable for the services which were rendered by him in, and in connection with, the reorganization proceedings, on their behalf and to their benefit?

4. Did the Circuit Court of Appeals for the Eighth Circuit, in interpreting the rights of the tort creditors and their counsel under a Plan filed, accepted and approved in Missouri, decide a question of local and contract law in a way conflicting with applicable decisions of the Courts of Missouri, which hold, in effect, that where a claimant is paid a sum of money in settlement of his claim and the party so paying it agrees, in addition, and as a part payment on account of the claim, to pay the claimant's attorney's fees, the amount of settlement is not the amount of money actually paid the claimant, but the settlement must be taken as an agreement on the part of the party so paying the money to pay the claimant's attorney such amount of compensation as he might properly have charged his client?

SUMMARY STATEMENT OF MATTER INVOLVED.*

On June 15, 1934, by the filing of its voluntary petition (R. 1-8), St. Louis Public Service Company, a utility corporation, engaged in the business of furnishing transportation facilities in and about the City of St. Louis, Missouri, and hereinafter sometimes called "Debtor," instituted in

*This petitioner's hereinafter mentioned application, at the hearing in the District Court thereon, was taken as evidence of the facts therein recited (R. 151-153, 163), and, therefore, this summary statement includes as facts many of such recitals.

the United States District Court for the Eastern Division of the Eastern District of Missouri a proceeding for reorganization under the provisions of Section 77-B of the Bankruptcy Act, and thereafter such proceedings were had in said cause (R. 9-43); that on July 7, 1939, said District Court therein confirmed a Plan for the reorganization of said Debtor (R. 43-54). After write-offs and the making of all payments provided in the Plan, the Debtor had assets of $47,554,329.00, including $4,450,000.00 in cash, and a net worth of $20,362,000.00 (R. 29, 159-160).

On about July 16, 1934, at the instance and request of law firms representing a large amount of tort claims, there was formed a protective committee, which, while denominated "The Committee For The Protection Of General Creditors Of St. Louis Public Service Company," represented only tort creditors (R. 58-59). The said Committee, sometimes referred to, and named in said Plan, as "The General Creditors' Committee" (R. 25), and herein usually referred to as "Committee," was constituted under and by virtue of a written agreement, dated as of July 16, 1934 (R. 185-188), and filed in said proceeding on December 27, 1934 (R. 58), and by the terms of said agreement the creditors who joined therein expressly authorized the Committee to employ counsel (R. 187) and in substance agreed, among other things, that the Committee should have full authority to represent and act for them (R. 186-187), and that all expenses incurred by the Committee should be assessed against and paid by them, and that, as security for the payment of such expenses, the Committee should have a first lien on their claims (R. 187).

On October 19, 1938, the District Court entered an order finding, in substance, among other things, that it was to the best interests of the tort creditors that the Committee should, and directing that it be, authorized to continue in its work on behalf of the tort creditors (R. 10-12).

There was a total of about 7,600 tort claims (R. 58-59) in the aggregate principal amount of $2,228,699.00 (R. 51) allowed in said proceeding and the Committee was duly authorized to act for the holders of the great majority of said aggregate amount of tort claims (R. 58-59).

At about the time it was constituted the Committee employed Petitioner, an attorney of St. Louis, Missouri, as counsel, and Petitioner served the Committee and the tort creditors as counsel in and in connection with the reorganization proceedings from the time of his employment on about July 16, 1934, until after the confirmation of the Plan, for an aggregate of about five years and four months, during which time, as such counsel, he performed services on approximately 800 days on an average of four hours per day (R. 59-60).

In the course and as a part of his services as such counsel, Petitioner, among other things, instituted and prosecuted in said reorganization proceedings various actions wherein he contended for priority for tort claims and challenged the validity of the claims of a certain group of banks and the validity and priority of certain mortgages and liens on debtor's property (R. 60-63). The Plan, as was found by the District Court in its order of confirmance, involved a compromise of such litigation and the Court found such compromise "fair and equitable" (R. 52, 60-61).

While the tort creditors, as a result of Petitioner's efforts in their behalf, received about $600,000.00 more than they would have received under plans of reorganization formulated during the early stages of the proceedings (R. 62-65), the Petitioner's services redounded also to the great financial benefit of the debtor itself, particularly in the compromise of the mentioned claims of a group of banks which arose out of a loan from the banks to the debtor in the principal amount of $10,000,000.00 and the

debtor's pledge of $16,626,000.00, principal amount of the mortgage bonds of its predecessor in title as collateral security therefor (R. 60-62). Said banks having filed in said proceeding their respective claims (R. 76-81), and the debtor's trustee having filed his report recommending that said claims and said pledge of bonds as collateral security therefor should be adjudged valid (R. 81-82), the Petitioner instituted and prosecuted class proceedings challenging the validity of said claims and pledge and objecting to the allowance thereof (R. 82-89). Such litigation (wherein Petitioner also served as counsel for the City of St. Louis) (R. 88) was compromised by, and under the express terms of the Plan (R. 23-24, 52), upon a basis whereby the banks made concessions (R. 23-24) which, as appears from the debtor's evidence and recitals in the Plan, resulted in a saving to the debtor of about $2,222,-144.01 (R. 156-158, 23-24, 89-93).* The District Court, in confirming the Plan, found that said compromise "is fair and equitable" (R. 52).

During 1937 and 1938, while all of the before-mentioned litigation instituted by Petitioner was pending, the Committee and Petitioner conducted negotiations with the Reorganization Committee's counsel to the end of settling all such litigation and reaching an agreement in respect of the treatment to be accorded holders of tort claims in the reorganization of the debtor (R. 113-117). After various proposals and counter proposals had been made, the Reorganization Committee proposed that the Reorganization Plan should provide for the payment to tort creditors of 35 per cent of the principal amount of their claims (R.

*While the Special Master to whom such matter had been referred filed on July 7, 1939, his Report recommending that said objections be overruled and that the claims and pledge be adjudged valid, the litigation, at the time of such Report, had become moot by reason of the matter having already been settled by the terms of the Plan, and, accordingly, exceptions or further proceedings in respect of such Report had been made unnecessary.

115-116). Petitioner and the Committee rejected such offer and "made clear that (they) would not accept a Plan providing for 35 per cent cash payment to tort creditors," unless such payment should be net to the tort creditors themselves (R. 170), and finally the said negotiators reached an agreement (R. 115-117), in pursuance of which there was incorporated in the Plan, Section II (2d) thereof (R. 25-26), providing as follows:

> "Holders of tort claims will receive a sum in cash equal to 35 per cent of the principal amount of their respective claims (without interest) and in addition thereto, and as a further payment on account of such claims the Reorganized Company shall pay in cash the reasonable compensation and expenses of The General Creditors' Committee formed under agreement dated as of July 16, 1934, and its counsel, for their services in, and in connection with, the reorganization proceedings, the amount of such compensation and expenses to be determined by the Court; said sums in cash to be paid as promptly as reasonably possible after the confirmation of the Plan of Reorganization, and exclusive of court costs which will be paid in full by the Reorganized Company; said sums to be so paid on account of said tort claims shall be in full settlement of the respective claims of tort claimants against the Company and its property."

In the respective treatment of all the classes of creditors and stockholders dealt with by the reorganization Plan, the tort creditors constitute the sole and only class for which the Plan contained an express provision that, as a part and "further payment" on account of their claims, the reorganized Debtor "shall pay" the compensation and expenses of its Committee and counsel for their services in, and in connection with, the reorganization proceedings. No same or similar provision is contained in the treatment provided in the Plan for any other class whatsoever (R.

21-24, 26-27). For those other than the Committee and counsel for the tort creditors, there was made a general provision, contained in Section II (7) of the Plan, to the effect that the reorganized Debtor shall pay all costs and expenses of administration and "other allowances" which "may" be approved or made by the Court (R. 28-29). On April 20, 1939, the Plan, containing the aforesaid provision for the tort creditors, was filed in the reorganization proceeding by the Reorganization Committee (R. 13-31).

On May 16, 1939, the District Court entered an order (R. 31) finding and decreeing, among other things, that "said plan is fair and equitable and feasible, and complies with the relevant provisions of all applicable laws" (R. 32), and directing, in substance, that a copy of the Plan and of said Order be sent to all creditors and stockholders, **except the holders of tort claims** (R. 40), and expressly finding that it was unnecessary to send the tort creditors a copy of the plan and of said order for the reason that "in said Plan said tort creditors receive solely cash on account of their claims" (R. 41), and directing the Debtor's Trustee to send to all tort creditors a notice (R. 41), appended to said order as Exhibit E thereto, in the following form (R. 42-43):

[fol. 95] "Exhibit 'E' to Order

Notice to Tort Creditors of the St. Louis Public Service Company

In the District Court of the United States Within and for the Eastern Division of the Eastern Judicial District of Missouri

No. 7651

In the Matter of St. Louis Public Service Company, Debtor

In Proceedings for the Reorganization of a Street Railroad Company

The United States District Court at St. Louis, Missouri, entered an order on May 16, 1939, by which order it found that the Plan of Reorganization proposed on that day by the Reorganization Committee was fair, equitable and feasible. The Court set June 28, 1939 as the date for hearing on confirmation of said Plan. The Plan cannot be confirmed until accepted by two-thirds of each class of creditors, so it is important that you give this matter your prompt attention.

Under the Plan you are entitled to receive thirty-five per cent of your claim in cash. The Plan provides with respect to your claim as follows:

[fol. 96] "(d). Tort Claimants.

Holders of tort claims will receive a sum in cash equal to 35% of the principal amount of their respective claims (without interest) and in addition thereto, and as a further payment on account of such claims the Reorganized Company shall pay in cash the reasonable compensation and expenses of The General Creditors' Committee formed under agreement dated as of July 16, 1934, and its counsel, for their services in, and in connection with, the reorganization proceedings, the amount of such compensation and expenses to be determined by the Court; said sums in cash to be

paid as promptly as reasonably possible after the confirmation of the Plan of Reorganization, and exclusive of court costs which will be paid in full by the Reorganized Company; said sums to be so paid on account of said tort claims shall be in full settlement of the respective claims of tort claimants against the Company and its property. * * *"

If you have already authorized the said General Creditors' Committee to represent you in this matter, no further action need be taken by you.

If you have not given such authorization and the Plan is acceptable to you, you should give such authorization to the Committee immediately addressed to Committee for the Protection of General Creditors of St. Louis Public Service Company, Room 814—722 Chestnut Street, St. Louis, Missouri, or sign the enclosed form of acceptance and mail the same in accordance with the instructions thereon. All parties will be benefited by a speedy consummation of the reorganization proceedings, and if the [fol. 97] Plan is agreeable to you, kindly cooperate by sending your acceptance at once.

By order of the Court.

Henry W. Kiel, Trustee.

May —, 1939."

In pursuance of such order said notice was sent by Debtor's Trustee to each of the tort creditors (R. 47).

The Plan was accepted on behalf of all classes of creditors and stockholders affected thereby, and thereafter such proceedings were had that, on July 7, 1939, the Court duly entered its order confirming the Plan and directing the doing of such things and taking of such steps "as may be necessary to consummate the Plan and carry it into effect" (R. 43-54).

On December 5, 1939, Petitioner duly filed in said proceeding his Application for the determination by the Court of the amount of his compensation and expenses for "serv-

ices in, and in connection with, the reorganization proceedings" and for an order directing the payment thereof, in accordance with the provisions of Section II (2d) of the Plan (R. 57-146).

At the hearing had in said District Court on said application this petitioner's application was taken as evidence of the facts therein recited (R. 151-153, 163). It was uncontradicted that Petitioner performed the services mentioned in said application, and that his services were reasonably worth $75,000, the amount prayed for by him therein (R. 163-181). Counsel for the Debtor and its Trustee stated to the Court, at the hearing, that Petitioner had worked hard and had "co-operated throughout this entire proceeding with the Trustee and his Counsel in the administration of the property" (R. 173), but it was contended, in opposition to the amount sought by Petitioner, that his compensable services should be limited to those of his services which were "in connection with the consummation of the Plan and beneficial to the estate as a whole," and that such of Petitioner's services as were "essentially performed for the benefit of the Tort Creditors" were not compensable out of Debtor's estate (R. 166-168, 179-181). The District Court sustained such contention, and, by its order, judgment and decision made and entered in said proceeding on December 21, 1939 (R. 183-184), allowed Petitioner nothing for his services on behalf of the Tort Creditors, "in, and in connection with, the reorganization proceedings," or his collection for them of about $600,000.00 more than was allotted to them under original Plans as aforesaid, and allowed Petitioner $15,000.00 (plus $778.23 for expenses) for "compensable" services "in connection with the formulation and consummation of the Plan for Reorganization of Debtor and with the administration of its estate" (R. 183-184). In determining Petitioner's said Application, the District Court took into consideration

each individual allowance made to others, and treated Petitioner's compensation and expenses as a reorganization expense, rather than as an additional and "further payment on account of such (tort) claims" (R. 184).

Upon his petition therefor (R. 188), Petitioner was by the Circuit Court of Appeals for the Eighth Circuit on January 19, 1940, duly allowed an appeal (R. 196-197) from said order and judgment, which appeal was duly prosecuted by Petitioner to and in said Circuit Court of Appeals (R. 184-185, 188-228).

On July 24, 1940, after due submission (R. 199), the United States Circuit Court of Appeals rendered its opinion (R. 201-214) and judgment (R. 214) upon petitioner's said appeal, affirming the said judgment, order and decision of the said District Court. In its said opinion, so affirming said order, judgment and decision of said District Court, the said Circuit Court of Appeals held (R. 213-214):

> "His (petitioner's) principal services were rendered on behalf of the tort creditors who through his efforts received a substantially larger share of the estate than original plans of reorganization allotted to them.
>
> "If the Trial Court was justified in restricting Mr. Stein's allowance by relating it to the benefit of his services to the estate, the order should be sustained, but Mr. Stein contends that the special provision of the Reorganization Plan, Section II (2d), entitled him to have the full amount of a reasonable contingent fee allowed him. The provision is appended and we think the wording, like that of Section 7 heretofore discussed, is compatible with an intent to cover compensable services only and to leave the amount thereof to the sound discretion of the trial court. Mr. Stein's efforts were primarily for his clients and the amount

allowed him was not disproportionate to the benefit to the estate."

Thereafter, on August 6, 1940, petitioner duly filed his petition for a rehearing (R. 215-224) in said cause in said Circuit Court of Appeals, and said petition for rehearing was denied on August 17, 1940 (R. 225).

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

The decision of the Circuit Court of Appeals for the Eighth Circuit to the effect that the language, "services in, and in connection with the Reorganization Proceedings," as used in Section II (2d) of the Plan, must be taken to mean, and be limited to, only such services as were beneficial to the debtor's estate—

(a) fails to give to said language in Section II (2d) of the Plan its usual and ordinary meaning and, in such respect, is in conflict with the decisions of this Court in:

Railroad Companies v. Schutte, 103 U. S. 118, 140, and
New York Rapid Transit Co. v. New York, 303 U. S. 573, 592.

(b) creates, by implication, a restriction which the language does not justify nor necessarily import, and, in such respect, is in conflict with the decisions of this Court in:

Duvall v. Craig et al., 2 Wheat. 45, 58-59; and
Kihlberg v. United States, 97 U. S. 398, 402.

(c) inserts words of which the Parties did not make use in formulating and accepting the Plan, and words of

which the District Court did not make use in its written notice to the tort creditors, as to what they would be entitled to receive under the Plan upon their acceptance and the confirmation thereof, and, in such respects, is in conflict with the decision of this Court in:

Harrison v. Fortlage, 161 U. S. 57, 63.

(d) interpolates a restriction and stipulation not contained nor implied on the face of Section II (2d) of the Plan, nor in the District Court's said written notice to the tort creditors, and, in such respect, is in conflict with the decisions of this Court in:

Robbins v. Rollins' Executors, 127 U. S. 622, 633;
Sheets v. Selden, 74 U. S. 416, 424;
Gavinzel v. Crump, 89 U. S. 308, 319;
Kihlberg v. United States, 97 U. S. 398, 402;
The Harriman, 76 U. S. 161, 173.

(e) gives to the phrase "in, and in connection with" a highly restricted and limited interpretation, rather than a broad interpretation, and, in such respect, is in conflict with the decision of this Court in Danciger et al. etc. v. Cooley, 248 U. S. 319, 327, and with the memorandum decision of the Circuit Court of Appeals for the Second Circuit in:

Kokusai Kisen Kabushiki Kaisha v. Columbia Stevedoring Co., Inc., 100 F. (2) 1016, affirming the decision of the District Court, 23 Fed. Supp. 403, 405.

II.

The decision of the Circuit Court of Appeals for the Eighth Circuit, to the effect that Section II, (2d), of the Plan is not to be construed as intending to reimburse the

services of counsel for the tort creditors in such sums as he might properly have charged them for his "services in, and in connection with the Reorganization Proceedings," so that each tort creditor will be able to receive 35 per cent of the principal amount of his claim, net, and without charges or rebates for such services, is in conflict with the decision of this Court in Harrison v. Fortlage, 161 U. S. 57, 63; and with the decision of the Circuit Court of Appeals for the First Circuit in,

> Turner v. Woodward, 259 F. 737, 750 (approving and following the decision in Edwards v. Bay State Gas Co., 172 F. 971, 978, 981).

III.

The decision of the Circuit Court of Appeals for the Eighth Circuit to the effect that Section II, (2d), of the Plan (negotiated, agreed upon, accepted, and approved in Missouri) does not provide for the payment to the tort creditors of 35 per cent of their claims, net to themselves, and that petitioner is not entitled to an allowance out of the Reorganized Debtor's estate for the full amount of reasonable compensation for his services on behalf of the tort creditors, "in, and in connection with, the reorganization proceedings," decides a question of local and contract law in a way conflicting with applicable decisions of the Courts of Missouri which hold in effect that, where a claimant is paid a sum of money in settlement of his claim and the party so paying it agrees, in addition, to pay the claimant's attorney's fees, the amount of settlement is not the amount of money actually paid the claimant, but the settlement must be taken as an agreement on the part of the party so paying the money to pay the claimant's attorney the full amount of compensation which he would be entitled to receive from the claimant under

the terms of his employment; among which applicable decisions of the Courts of Missouri are,

Curtis et al. v. Metropolitan Street Railway Company, 125 Mo. App. 369, 372, 374, 102 S. W. 62, 63 (Kansas City Court of Appeals);

Kraemmerer v. St. Louis E. T. Ry. Co., 201 Mo. App. 305, 315, 211 S. W. 687, 689 (St. Louis Court of Appeals);

Mylton et al. v. New York, C. & St. L. R. Co., 198 S. W. 189 (Kansas City Court of Appeals; not officially reported).

IV.

There being nothing in the Plan as accepted by the tort creditors which indicated to them that they would be left liable for the services performed by their counsel on their behalf in, and in connection with, the reorganization proceedings, or that their counsel's compensable services would be restricted to only such of his services as were beneficial to the debtor, the decision of the Circuit Court of Appeals for the Eighth Circuit, to the effect that the District Court might so limit the compensable services of the tort creditors' counsel after their acceptance of the Plan and thereby modify and cancel rights accorded the tort creditors under the usual and ordinary meaning of the provision made in the Plan for them, without submitting the Plan as so changed for further consideration of the tort creditors, is in conflict with the decisions of the Circuit Courts of Appeals for the Ninth Circuit, the First Circuit, and the Seventh Circuit, respectively, in,

Downtown Inv. Ass'n v. Boston Metropolitan Bldg., Inc., 81 F. (2) 314, 329 (C. C. A. 1 C.);

Exley et al. v. H. W. Clark Co., 79 F. (2d) 681, 684 (last sentence) (C. C. A. 7 C.);

Weiffenbach v. McLean et al., 79 F. (2) 63, 68 (C. C. A. 9 C.).

V.

While said proceeding was under Section 77-B of the Bankruptcy Act, the language employed in providing that the debtor as a part payment on account of the tort claims shall pay the compensation of tort creditors' counsel, is practically the same language as is employed in that part of the Chandler Act [11 U. S. C. A., Sec. 621 (4)] which, separate and apart from the sub-chapter thereof (11 U. S. C. A., Sec. 636, Sub-chapter XIII) relating to compensation and allowances, provides that, as a prerequisite to the confirmation of a plan, the judge shall be satisfied that,

> "(4) all payments made or promised by the debtor * * *, for services * * * **in, or in connection with the proceeding** * * *, have been fully disclosed to the judge and are reasonable, or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge. * * *" (Emphasis Petitioner's.)*

The Circuit Court of Appeals for the Eighth Circuit has, therefore, in effect decided that the phrase "services * * * in, or in connection with the proceeding" as so used in the Chandler Act [Sec. 621 (4), U. S. C. A.] means and is limited to only such services as, independent of any contract or provision in the Plan, are compensable under other portions of the Bankruptcy Act relating to compensation and allowances. Such question so decided by said Circuit Court of Appeals is an important question of federal law which has not been, but should be, settled by this Court.

VI.

It is a special and important matter that the public confidence in the Courts and the administration of justice

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*A somewhat similar provision in Section 77-B of the Bankruptcy Act (11 U. S. C. A. § 207 [f, 5]) reads as follows:

> "After hearing such objections as may be made to the plan, the judge shall confirm the plan if satisfied that * * * (5) all amounts to be paid by the debtor * * *, and all amounts to be paid to committees or reorganization managers, * * * for services or expenses incident to the reorganization have been fully disclosed and are reasonable, or are to be subject to the approval of the judge."

should be protected by forbidding that some thousands of tort creditors, who have accepted a plan of reorganization in reliance upon the treatment of their claims as stated in a notice of the plan of reorganization sent them by a District Court, should be deprived of, and left personally liable for, the expense of their counsel fees which, by the ordinary and common meaning of the language employed by said District Court in such notice, they were advised the debtor would pay as an additional and "further payment on account of such (tort creditors') claims," and of which they were deprived by reading into such notice limitations and restrictions not contained therein.

PRAYER.

For the purpose of correcting the errors complained of and to the end that the rights of the petitioner may be determined in accordance with the law, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding it to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the records and proceedings of the said Circuit Court of Appeals in the within described cause of "In the Matter of St. Louis Public Service Company, Debtor. Hyman G. Stein, Appellant, vs. St. Louis Public Service Company, Debtor; Henry W. Kiel, Trustee for St. Louis Public Service Company, et al., Appellees, Cause No. 11,669, in Bankruptcy," to the end that the judgment of said Circuit Court of Appeals in said cause may be reviewed by this Court as provided by law, and that your petitioner may have such other relief as to this Court may seem appropriate, and that the judgment of the said Circuit Court of Appeals may be reviewed by this Honorable Court.

HYMAN G. STEIN,
Petitioner, Pro Se.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. .....

HYMAN G. STEIN, Petitioner,

vs.

ST. LOUIS PUBLIC SERVICE COMPANY, Debtor, HENRY W. KIEL, Trustee for ST. LOUIS PUBLIC SERVICE COMPANY, et al.

SUPPORTING BRIEF.

I.

OPINIONS OF THE COURTS BELOW.

The opinion and decree of the said District Court appears at pages 183-184, inclusive, of the transcript of the record filed herewith, and it is not reported.

The opinion of the said Circuit Court of Appeals (R. 200) is reported in 114 F. (2d) 53.

II.

JURISDICTION OF THIS COURT.

1.

Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C. A., Sec. 347), and Section 24 (c) of the Bankruptcy Act, as amended by the Act of June 22, 1938, 52 Stat. 854-855 [11 U. S. C. A. 47 (c)].

2.

The following decisions sustain the jurisdiction of this Court to review the decision of the Circuit Court of Appeals for the reasons set out in the specifications of error:

Dickinson Industrial Site, Inc., v. Cowan, 309 U. S. 382;
Warner v. New Orleans, 167 U. S. 467;
The Anasoldo San Georgio I. v. Rheinstrom Brothers, 294 U. S. 494;
Ivanhoe Building & Loan Association of Newark v. Orr, 295 U. S. 243;
Erie Railroad Company v. Tompkins, 302 U. S. 671.

III.

DATE OF FINAL JUDGMENT BELOW.

The original date of the judgment of said Circuit Court of Appeals, here sought to be reviewed, is July 24, 1940 (R. 214). Petitioner's petition for rehearing was duly filed in said Circuit Court of Appeals on August 6, 1940 (R. 215-224), and was overruled on August 17, 1940 (R. 225).

IV.

STATEMENT.

A full statement of the case has been made in the petition for writ of certiorari, and in the interest of brevity the statement is not here repeated.

V.

SPECIFICATIONS OF ERROR.

A.

The Circuit Court of Appeals for the Eighth Circuit erred in deciding and adjudging that the District Court was justified in restricting petitioner's allowance of com-

pensation by relating it to the benefit of his services to the estate of St. Louis Public Service Company, debtor.

B.

The Circuit Court of Appeals for the Eighth Circuit erred in deciding and adjudging that Section II (2d) of the Plan of Reorganization of St. Louis Public Service Company does not entitle petitioner to have allowed unto him the full amount of the reasonable compensation for his services on behalf of the tort creditors in, and in connection with, the reorganization proceedings.

C.

The Circuit Court of Appeals for the Eighth Circuit erred in deciding and adjudging that the wording of Section II (2d) of the Plan of Reorganization of St. Louis Public Service Company is compatible with an intent to cover only services which benefited the estate of the debtor, and to leave the amount thereof to the sound discretion of the trial court.

D.

The Circuit Court of Appeals for the Eighth Circuit erred in deciding and adjudging that there was no shifting of liability in the Plan from the tort creditors to the Reorganized Company for the compensation of petitioner for his services on behalf of the tort creditors in and in connection with the reorganization proceedings.

E.

The Circuit Court of Appeals for the Eighth Circuit erred in failing to give to the phrase "services in, and in connection with the reorganization proceedings," as used

in Section II (2d) of the Plan, the usual and ordinary meaning thereof, and in creating by implication a restriction which the said language does not justify nor necessarily import.

F.

The Circuit Court of Appeals for the Eighth Circuit erred in that it, in effect, inserted in Section II (2d) of the Plan, words of which the parties did not make use in formulating and accepting the Plan, and words of which the District Court did not make use in its written notice to the tort creditors as to what they would be entitled to receive under the Plan.

G.

The Circuit Court of Appeals for the Eighth Circuit erred in that it, in effect, interpolated in Section II (2d) of the Plan a restriction and stipulation not implied on the face thereof.

H.

The Circuit Court of Appeals for the Eighth Circuit erred in that it considered and treated the compensation of the tort creditors' counsel for his services in, and in connection with the reorganization proceedings as a reorganization expense, rather than as a part and further payment on account of the tort claims.

I.

The Circuit Court of Appeals for the Eighth Circuit erred in that it decided a question of Missouri contract law in a way conflicting with applicable decisions of the courts of Missouri.

ARGUMENT.

POINT I.

(Assignment of Errors A, B, C, D, E, F and G.)

Holders of a great majority in amount of the tort claims joined in the agreement constituting the tort creditors' committee (R. 58) and by the terms of such agreement expressly authorized the committee's employment of counsel, obligated themselves for the payment of their committee's compensation and expenses and subjected their claims to a first lien as security for the payment of all expenses incurred by the committee in their behalf (R. 186-187).*

The Plan as submitted to and accepted by the tort creditors provides that as a part "and further payment" on account of their claims, the reorganized company shall pay the reasonable compensation and expenses of the tort creditors' committee and its counsel, for their "services in, and in connection with, the reorganization proceedings." The District Court's notice to the tort creditors not only quoted the language of Section II (2d) of the Plan, but preceded such quotation with the unequivocal statement and explanation to each tort creditor that,

> "Under the Plan you are entitled to receive thirty-five per cent of your claim in cash" (R. 42).

By interpolation, inserting in Section II (2d) of the Plan words neither contained therein nor implied on the face thereof, and giving to said language "for their services in, and in connection with, the reorganization proceedings" a meaning highly limited, restricted and contrary

*As to the probable liability of the remaining tort creditors for a proportionate part of the expense for services performed on behalf and to the benefit of the class as a whole, see: Wallace v. Fiske, 80 F. (2) 897, 907-909.

to the ordinary and usual meaning thereof, the Circuit Court of Appeals for the Eighth Circuit has in effect substituted for such languge in the Plan the phrase **"for such** of their services in and in connection with the reorganization proceedings **as were beneficial to the debtor's estate."** In such manner the tort creditors have been left liable for the compensation of their counsel for his services on their behalf in and in connection with the reorganization proceedings and have been deprived of a material and integral part of the consideration which the Plan provides, and which the District Court notified them that they would receive in settlement of their claims; and in such manner the rights of petitioner have been adversely and materially changed.

That the interpretation by said Circuit Court of Appeals of the language "in connection with" is not in accordance with the ordinary and usual meaning thereof and that such language is not to be given a restricted or limited meaning, and that the decision of said Circuit Court of Appeals is, in such respects, in conflict with an applicable decision of this Court readily appears upon an examination of the decision in Danciger et al., etc., v. Cooley, 248 U. S. 319, 327.

The decision of said Circuit Court of Appeals in giving to the language "in connection with" a highly restricted and limited meaning, rather than a broad meaning, is also in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in Kokusai Kisen Kabushiki Kaisha v. Columbia Stevedoring Co., Inc., 100 F. (2) 1016, approving and affirming, by a memorandum decision, the decision of the District Court (23 Fed. Supp. 403, 405-406) holding:

> "The Courts have given the phrase 'in connection with' a broad interpretation. In the case of Gurney

v. Atlantic & Great Western R. Co., 58 N. Y. 358, * * * the Court held that said claim (for counsel services) should be paid, Judge Allen, in a concurring opinion, stating (pages 371, 372):

"'The words, "in connection with that company's railways," as used and in the relation they bear to the whole clause, are the equivalent of "in the interest and upon the employment of that company in and about its railways and the operation and management thereof, and all matters connected with, relating to, and growing out of the proper and legitimate business of the company as the possessor and operator of such railways."

"'See, also, Danciger v. Cooley, 248 U. S. 319, 39 S. Ct. 119, 63 L. Ed. 266.'"

The decision of the Circuit Court of Appeals for the Eighth Circuit in creating, by implication, a restriction which the language "for their services in, and in connection with, the reorganization proceedings," as used in Section II (2d) of the Plan, neither justifies nor necessarily imports, is in conflict with a number of decision of this Court. In Railroad Companies v. Schutte, 103 U. S. 118, 140, this Court said:

"* * * in * * * contracts, language is to be given, if possible, its usual and ordinary meaning. The object is to find out from the words used what the parties intended to do."

In New York Transit Co. v. New York, 303 U. S. 573, 575, this Court held:

"There is no reason to limit the ordinary meaning of words used in a contract by men prepared to invest under its terms."

In Duvall v. Craig et al., 2 Wheat. 45, 58-59, this Court said:

"The case ought to be a very strong one, which

should authorize a court to create, by implication, a restriction which the order of the language does not necessarily import or justify. It ought to be one in which no judicial doubt could exist of the real intention of the parties to create such a restriction."

In Harrison v. Fortlage, 161 U. S. 57, 63, this Court said:

"The Court is not at liberty, either to disregard words used by the parties, * * *, or to insert words which the parties have not made use of."

In Sheets v. Selden, 74 U. S. 416, 424, this Court held:

"This Court cannot interpolate what the contract does not contain."

There was nothing in Section II (2d) of the Plan as submitted to and accepted by the tort creditors which indicated to them (or to petitioner) that they would be left liable for petitioner's compensation for his services on their behalf in, and in connection with the reorganization proceedings, nor that the compensation payable under the Plan to petitioner by the Reorganized Company would be related solely to the benefit of his services to the debtor's estate. The District Court's notice not only advised each tort creditor of the provisions of Section II (2d) of the Plan, in the language thereof, but further explained as a preface thereto that,

"Under the Plan you are entitled to receive thirty-five per cent of your claim in cash" (R. 42).

The decision of the Circuit Court of Appeals for the Eighth Circuit in effect cancels the provision in the Plan, as accepted by the tort creditors, that the compensation of their counsel for his services in, and in connection with the reorganization proceedings shall be paid by the Reorganized Company as a part and further payment on ac-

count of the tort claims, and in such respect is in conflict with applicable decisions of the Circuit Court of Appeals for the First, Seventh and Ninth Circuits, respectively.

In Downtown Inv. Ass'n v. Boston Metropolitan Bldgs., Inc., 81 F. (2) 314, 329 (C. C. A. 1 C.), the Court said:

> "There was nothing in the original plan which indicated to the bondholders that the liens secured by their mortgage were to be subordinated to the rights of the lessees. We think the district court erred in not submitting the plan as amended for further consideration of the creditors and stockholders."

In Exley et al. v. H. W. Clark Co., 79 F. (2) 681, 684 (last sentence) (C. C. A., 7 C.), the Court said:

> "These directors voluntarily offered to relinquish and cancel those bonds in case the plan was approved. That provision is in the approved plan, and under the circumstances the Court had no power to cancel the bonds unconditionally. * * *"

In Weiffenbach v. McLean et al., 79 F. (2) 63, 68 (C. C. A., 9 C.), the Court said:

> "The parties did not authorize the acceptance of the plan which was finally approved by the Court. Consequently the order of the Court was without the necessary authority."

POINT II.

(Assignment of Error H.)

The Circuit Court of Appeals for the Eighth Circuit in effect upheld and approved the action and decision of the District Court in considering and treating petitioner's compensation as a reorganization expense, rather than as a part and further payment on account of the tort claims.

To treat the petitioner's compensation as a reorganization expense and determinable according to the rules applicable to the allowance of compensation and expenses in corporate reorganization proceedings is to nullify that part of Section II (2d) of the Plan which provides that such compensation shall be paid as a part and further payment on account of tort claims. The District Court's order states that in making allowances to petitioner and others "* * * each individual allowance was taken into consideration by the Court in connection with the other allowances. * * *" Such action and decision, in conflict with the decision of this Court in Harrison v. Fortlage, 161 U. S. 57, 63, disregards words "used by the parties."

It is uncontradicted that the tort creditors' representatives rejected a proposal that the tort creditors should be paid only 35 per cent of their claims and "made clear" to the Reorganization Committee that they would not accept a plan unless it provided for the payment to the tort creditors of 35 per cent of their claims in cash net to the tort creditors, and that, in pursuance of an agreement to that effect, there was inserted in the plan the provision respecting the payment by the Reorganized Company of the compensation of the tort creditors committee and its counsel for their services "in, and in connection with the reorganization proceedings" (R. 115-117; 170).

The decision of the Circuit Court of Appeals for the Eighth Circuit deprives the petitioner of his right under the terms of the plan to be allowed compensation in such amount as under the ordinary rules between counsel and client he would have been entitled to recover for his "services in, and in connection with, the reorganization proceedings" and deprives the tort creditors of their right under the plan to receive 35 per cent of their claims in cash, net to themselves and without charges or rebates, and in such respects is in conflict with the decision of the

Circuit Court of Appeals for the First Circuit in Turner v. Woodward et al., 259 F. 737, 750 (last two paragraphs), citing with approval, characterizing as analogous, and relying on, the decision in Edwards v. Bay State Gas Co., 172 F. 971. In said case of Edwards v. Bay State Gas Co. (so approved and relied on by the Circuit Court of Appeals for the First Circuit) there had been entered a consent decree providing, among other things (172 F. 971, 978), that, "the receiver shall further retain in his hands a sum sufficient to cover the disbursements made * * * and other expenses incurred in connection with the suit and proceeding * * * and to cover, also, allowances to counsel * * * for intervening petitioners * * * as may be determined by this Court. * * * The receiver is authorized to pay * * * the bonds presented * * *." In its subsequent decision respecting the rights of counsel for the intervening petitioners under the terms of such consent decree the Court said (172 F. 971, 981):

> "* * * the Court must construe the interlocutory decree * * *, as intending to reimburse the services and disbursements of the counsel for the interveners in such sums as they might properly have charged their clients, so that each client will be able to receive his income bonds in full, net, and without charges or rebates. By force of that decree the court is to award here whatever, under the ordinary rules between counsel and client, counsel would have been entitled to recover for services and disbursements; and this independently of any objection that * * * without the decree * * *, nothing could have been awarded in this proceeding."

The language "services in, and in connection with, the reorganization proceedings," as used in Section II (2d) of the Plan, is practically the same language as is employed in that part of the Chandler Act [11 U. S. C. A., Sec. 621 (4)] which, separate and apart from the subchapter thereof (11 U. S. C. A., Sec. 636, Subchapter XIII)

relating to compensation and allowances, provides that, as a prerequisite to the confirmation of a plan, the judge shall be satisfied that:

> "(4) All payments made or promised by the debtor * * *, for services * * * **in, or in connection with the proceeding** * * *, have been fully disclosed to the judge and are reasonable, or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge, * * *." (Emphasis petitioner's.)

The Circuit Court of Appeals for the Eighth Circuit has in effect decided that "services in, and in connection with, the reorganization proceedings" means only such services as, independent of any other consideration, are compensable under the provisions of the Bankruptcy Act relating to **allowances** of compensation and expenses and the effect of such an interpretation is to make nugatory the quoted language of 11 U. S. C. A., Section 621 (4). Such question so decided by said Circuit Court of Appeals is an important question of federal law which has not been, but in view of such decision and the effect thereof, should be, settled by this Court.

POINT III.

(Assignment of Error I.)

The plan was filed, accepted, approved and confirmed in Missouri. It is in effect a contract between the parties affected thereby which has been approved by the Court. As such contract its language and terms should be interpreted in accordance with the applicable decisions of the courts of Missouri. Therefore, petitioner respectfully submits that the Circuit Court of Appeals for the Eighth Circuit has decided a question of Missouri contract law in a way conflicting with applicable decisions of Missouri which hold in effect that, where a claimant is paid a sum of money in settlement of his claim and the party so paying it agrees, in addition, to pay the claimant's attorney's

fees, the settlement must be taken as an agreement on the part of the party so paying the money to pay the claimant's attorney the full amount of compensation which he would be entitled to receive from the claimant under the terms of his employment. Among the decisions of Missouri, so conflicted with by the decision of said Circuit Courts of Appeals are,

Curtis et al. v. Metropolitan Street Railway Company, 125 Mo. App. 369, 372, 374, 102 S. W. 62, 63 (Kansas City Court of Appeals);

Kraemmerer v. St. Louis E. T. Ry. Co., 201 Mo. App. 305, 315, 211 S. W. 687, 689 (St. Louis Court of Appeals);

Mylton et al. v. New York C. & St. L. R. Co., 198 S. W. 189 (Kansas City Court of Appeals, not officially reported).

While such Missouri decisions involve cases in which settlement was made without the knowledge of the claimant's attorney, such fact appears to have been treated in said decisions as but incidental, and the nature and terms of the settlement agreement are the decisive factors upon which the decisions are founded and the mentioned rule of law declared.

Conclusion.

Being desirous of not burdening the Court with an unduly lengthy argument, we have briefly called to the Court's attention the questions involved and the reasons that exist for the issuance of the writ of certiorari.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a writ of certiorari, and thereafter reviewing and reversing the decision below.

Respectfully submitted,

HYMAN G. STEIN,

Petitioner, pro se.